IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.529 OF 2002

M/s.Manilal Patel & Co. ...Petitioner.

Vs.

Shri Vinodchandra Keshavlal Shah

& Anr. ...Respondents.

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Mr.K.S.Bapat for the Petitioner.

Mr.S.N.Deshpande for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

March 11, 2005.

P.C. :

1. The First Respondent instituted a complaint for unfair labour practice under Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 in the Industrial Court on 8th February 1991. The grievance of the First Respondent was that he was not allowed to report for work. Thereafter, on 13th February 1991 and 16th

September 1991, two chargesheets were issued to the First Respondent and an order of dismissal was passed on 24th October 1991. The Petitioner filed an approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 on 4th November 1991. It appears that a reference to adjudication was pending before the Central Government Industrial Tribunal (Reference No.CGIT-1/59/91). The reference was in regard to a Charter of demands raised by the Transport and Dock Workers' Union. The CGIT held on 19th January 1995 that the enquiry that was held by the Petitioner was not fair and proper. However, an opportunity was given to the Petitioner to lead evidence. On 16th April 1996, the Petitioner filed an application for the withdrawal of the approval application inter alia contending that there were two divisions of the applicants, the first, a Clearing and Forwarding Division and the second, a Cotton Trading Division. All workers were members of the Transport and Dock Workers' Union. Since the Petitioner was engaged in the Clearing and Forwarding business, it was stated that the appropriate Government for that Division was the Central Government. Upon the division of the family business, it has been stated that the Cotton business was given to the Applicant-Petitioner. In the application for

withdrawal of the approval application, the Petitioners stated that the workmen had in the meantime, organized themselves under the Rashtriya Cotton Kamgar Union and a settlement had been arrived at with the Union before the Conciliation Officer. When the original reference came up for hearing, the Tribunal was stated to have disposed of the reference by an award dated 3rd June 1993. Consequently, the Petitioners applied for the withdrawal of the approval application stating that the First Respondent was working as an Accountant in the Cotton Division of which the appropriate Government was the State Government.

2. On the approval application that was filed by the Petitioner, the CGIT passed an order dated 18th April 1996 stating that it could not compel the management to proceed with the application for approval. But it was observed that this would not amount to a nullification of its order dated 19th January 1995. The application for approval was in the circumstances, dismissed as withdrawn. On 16th January 1994, the Petitioner applied before the Industrial Court for the dismissal of the complaint filed by the First Respondent on the ground that the First Respondent had been dismissed from the service of the employer and that the complaint was,

therefore, not maintainable before the Industrial Court. That resulted in the impugned order dated 9th April 2001. The Industrial Court held that upon the application for approval under Section 33(2)(b) being withdrawn, the order of dismissal would not remain in force and there being no order of dismissal at all, the complaint could not be dismissed at that stage.

3. At the hearing of the Petition, the Petitioner states that it withdraws the application for the dismissal of the complaint Exh.B to the Petition and that all the rights and contentions of the parties may be permitted to be adjudicated upon by the Industrial Court at the hearing of the complaint. Since the Petitioner is not seeking to press the application for dismissal of the complaint at the present stage, the Petition does not really survive since all the issues between the parties will be adjudicated by the Industrial Court at the trial of the complaint. The application filed by the Petitioner (Exh.B) is accordingly dismissed as not pressed. In these circumstances, the Industrial Court is directed to dispose of Complaint (ULP) No.253 of 1991 on merits. All the rights and contentions of parties are kept open and it is clarified that the Industrial Court shall

determine upon the merits of the complaint uninfluenced by the observations contained in the impugned order dated 9th April 2001 which does not survive in view of the withdrawal of the application for dismissal. In this view of the matter, it is not necessary for the Court to deal with the points which have been raised in the petition including the maintainability of the complaint at the present stage. The Petition is accordingly disposed of. There shall be no order as to costs.

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